

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MICHAEL ALAN DOIEL,  
  
Defendant.

Case No. 3:12-cr-00009-HDM-VPC

ORDER

Defendant Michael Alan Doiel has filed a second motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF No. 82).<sup>1</sup> The government has opposed (ECF No. 84), and the defendant has replied (ECF No. 89). The defendant has also filed a "Motion to Produce Documentary Evidence" (ECF No. 88) and a "Notice of Supplemental Authority" (ECF No. 90).

On December 20, 2012, the defendant entered into a binding plea agreement by which he agreed to plead guilty to one count of possession with intent to distribute a controlled substance and one count of possession of stolen explosive materials. (ECF No. 60). The defendant was thereafter sentenced to a term of 120 months on the first count and a consecutive term of 75 months on the second count pursuant to the terms of the plea agreement. (ECF No.

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<sup>1</sup> Pursuant to General Order 2020-06, the Federal Public Defender filed a notice of non-supplementation (ECF No. 83) on February 7, 2022.

65). According to the Bureau of Prisons inmate locator, the defendant has a current projected release date of December 13, 2025. See <https://www.bop.gov/inmateloc/> (last accessed Mar. 14, 2022).

A defendant may seek compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), which provides in relevant part:

[T]he court, . . . upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction;

. . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.<sup>2</sup>

At the time U.S.S.G. § 1B1.13 was drafted to guide application of § 3582(c)(1)(a), only the warden of a defendant's institution could bring a motion for compassionate release. However, following the First Step Act, Pub. L. No. 115-391, Title VI, sec. 603(b)(1),

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<sup>2</sup> In addition to "extraordinary and compelling reasons," the court may grant a motion if "the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g)." 18 U.S.C. § 3582(c)(1)(A)(ii). Because the defendant is not at least 70 years old and has not served more than thirty years in prison, this provision does not apply.

1 § 3582, 132 Stat. 5194, 5239 (2018), defendants may now bring such  
2 motions directly to the court. Section 1B1.13 has not been updated  
3 since the amendment. The Ninth Circuit has therefore concluded  
4 that the current version of § 1B1.13 is not applicable to §  
5 3582(c)(1)(A) motions brought directly by a defendant, and, as  
6 such, is not binding on the court in this context. *United States*  
7 *v. Aruda*, 993 F.3d 797, 801-02 (9th Cir. 2021). Nevertheless, the  
8 factors set forth in § 1B1.13 may inform the court's exercise of  
9 its discretion. *Id.* U.S.S.G. § 1B1.13 provides:

10 Upon motion of the Director of the Bureau of Prisons  
11 under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a  
12 term of imprisonment (and may impose a term of supervised  
13 release with or without conditions that does not exceed  
14 the unserved portion of the original term of  
imprisonment) if, after considering the factors set  
forth in 18 U.S.C. § 3553(a), to the extent that they  
are applicable, the court determines that—

15 (1) (A) extraordinary and compelling reasons warrant  
the reduction;

16 . . .

17 (2) the defendant is not a danger to the safety of  
18 any other person or to the community, as provided in 18  
U.S.C. § 3142(g); and

19 (3) the reduction is consistent with this policy  
20 statement.

21 U.S.S.G. § 1B1.13.

22 A defendant is not entitled to be present for any hearing on  
23 a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

24 Before an inmate may file a motion for relief pursuant to  
25 § 3582(c)(1)(A), he must first present his request to the warden  
26 of his institution. The motion may be filed in court after the  
27 "defendant has fully exhausted all administrative rights to appeal  
28 a failure of the Bureau of Prisons to bring a motion on [his]

1 behalf" or 30 days have passed from the warden's receipt of his  
2 request, whichever is earlier. On or about December 27, 2021, the  
3 defendant mailed a request for compassionate release to the warden  
4 of his institution, FMC Fort Worth. (Mot. Ex. A). The government  
5 does not dispute that the defendant did so or that his motion is  
6 exhausted. The motion therefore appears to be exhausted.

7       The defendant advances three arguments to support his claim  
8 that extraordinary and compelling reasons for his early release  
9 exist. First, he argues that his parents are ill and unable to  
10 care for themselves. Second, he asserts that the BOP has failed to  
11 protect him from both vicious and debilitating attacks and COVID-  
12 19 and that he lives in fear of further attacks and medical  
13 complications from BOP's failure to treat symptoms caused by his  
14 contraction of COVID-19. Finally, he argues that he received a  
15 significantly higher sentence than he should have due to his  
16 attorney's ineffective assistance.

17       A. Parents' Medical Condition

18       The defendant asserts that his mother suffers from  
19 seropositive rheumatoid arthritis, osteoarthritis and spinal  
20 stenosis, which causes her to be in constant pain and unable to  
21 manage activities of daily living, and that his father suffers  
22 from stage 4 kidney disease, hyperlipidemia, chronic obstructive  
23 pulmonary disease, gastroesophageal reflux disease, obstructive  
24 sleep apnea, and membrane neuropathy. The government argues that  
25 the conditions of the defendant's parents do not rise to  
26 extraordinary and compelling reasons and that, even if they did,  
27 the defendant has at least two siblings who live near their  
28 parents. In reply, the defendant asserts, in conclusory fashion,

1 that his siblings have their own families and medical issues to  
2 take care of and are not "readily available" to assist with his  
3 parents' care.

4 The court does not find these circumstances to rise to the  
5 level of extraordinary and compelling reasons. While U.S.S.G. §  
6 1B1.13 is not binding on the court, the court may consider the  
7 policy in rendering its decision. It is significant that while the  
8 notes to § 1B1.13 recognize early release may be warranted where  
9 a defendant must care for his minor child or incapacitated spouse,  
10 it does not recognize the same for a defendant's parents.  
11 Nevertheless, and more importantly, the defendant has not  
12 established that he is the only person capable of caring for his  
13 parents, particularly where his siblings reside nearby. The  
14 defendant's conclusory statement about his sibling's medical and  
15 family matters hardly comes close to establishing their inability  
16 to care for their parents. Accordingly, the court does not find  
17 this an appropriate basis for compassionate release.

18 B. BOP's Failure to Protect and Treat

19 The defendant argues that, in 2016, he suffered an attack by  
20 fellow inmates who beat him with "locks in socks," that resulted  
21 in extensive injuries, including a fractured eye socket, damage to  
22 his shoulder, recurring migraines, and liver problems. The  
23 defendant asserts that he is now blind in his right eye and that  
24 he did not receive surgery to repair his shoulder until 2021.

25 The defendant further asserts that as a result of contracting  
26 COVID-19 in 2020, he now suffers from worsened hypothyroidism,  
27 abnormal liver and kidney numbers, and glaucoma. The defendant  
28 asserts that BOP has not provided treatment for these conditions.

1       The government responds that the defendant received shoulder  
2 surgery in 2021 and expressed satisfaction with his treatment.  
3 (See ECF No. 86). The government further argues that the COVID-19  
4 pandemic is not a basis for releasing the defendant where the  
5 defendant has twice refused the COVID-19 vaccination.

6       The defendant replies that while he is satisfied with the  
7 shoulder surgery, he endured five years of suffering before he  
8 received it, and his remaining conditions are still not being  
9 treated. The defendant argues that he has refused the Covid-19  
10 vaccine based on his religious beliefs and because he has already  
11 contracted the virus and continues to suffer its consequences  
12 daily.

13       Other than his delayed shoulder surgery, the defendant is not  
14 specific as to what treatment he believes he should be receiving  
15 for his eye, thyroid, liver, kidney and other conditions but is  
16 not. The BOP's alleged failure to protect the defendant in the  
17 past is not a basis for releasing the defendant absent a clear  
18 indication of what exactly the institution should be doing to treat  
19 his resulting injuries. The potential of any future attacks or a  
20 severe covid infection is purely speculative, particularly in  
21 light of the fact that the defendant has already suffered a covid  
22 infection and the institution continues to take steps to protect  
23 the inmates from covid. The defendant's speculative and conclusory  
24 arguments do not therefore support early release.

25       C. Ineffective Assistance of Counsel

26       The defendant asserts his attorney was ineffective in several  
27 respects, including primarily in failing to argue that the  
28 defendant was eligible for the safety valve under 18 U.S.C. §

1 3553(f). He also argues that he was erroneously advised with  
2 respect to the mandatory minimum sentence for Count 2 and was told  
3 that his sentences must run consecutively when they could have run  
4 concurrently. The government responds that any ineffective  
5 assistance of counsel claims have long been waived.

6 The defendant's claims, cognizable under § 2255, are untimely  
7 under that statute. Nor has the defendant established that such  
8 claims are a proper basis for compassionate release under §  
9 3582(c)(1)(A). But even if the claims were otherwise an appropriate  
10 basis for relief in this case, the defendant's claims are belied  
11 by the record.

12 The defendant faced a mandatory ten-year minimum sentence on  
13 Count One, the drug charge. The defendant claims he should have  
14 been eligible for the safety valve, which would have allowed the  
15 court to sentence below the statutory minimum, but his argument  
16 ignores that one condition of eligibility is that "the defendant  
17 did not . . . possess a firearm or other dangerous weapon . . . in  
18 connection with the offense." 18 U.S.C. § 3553(f)(2). The defendant  
19 possessed several firearms and C4 explosives material in  
20 connection with his drug offense. This fact precluded application  
21 of the safety valve in his case. Accordingly, counsel did not  
22 render deficient performance in failing to pursue the safety valve.

23 The plea agreement, which the defendant acknowledged at his  
24 change of plea he had read and understood, clearly indicates that  
25 no minimum sentence applied to the Count Two offense.

26 Finally, nothing in the plea agreement or the canvass of the  
27 defendant at his change of plea supports his contention that he  
28 was advised the sentences had to run consecutively.

1 In summary, the court is not persuaded that any of the factors  
2 argued by the defendant, alone or in combination, rise to the level  
3 of extraordinary and compelling reasons supporting his early  
4 release. Even if they did, early release is not warranted in light  
5 of the 18 U.S.C. § 3553(a) factors. The defendant, who despite  
6 falling into a criminal history category I, had significant prior  
7 contacts with the criminal justice system, possessed incredibly  
8 dangerous weapons, which he had stolen from a retired police  
9 officer's home. The binding plea deal allowed him to avoid both a  
10 potential life sentence and convictions on several additional  
11 counts charged in the superseding indictment. Considering all  
12 relevant conduct in this case, a sentence of 195 months remains  
13 necessary to reflect the seriousness of the offense, to promote  
14 respect for the law, to provide just punishment for the offense,  
15 to afford adequate deterrence to criminal conduct, to protect the  
16 public from further crimes of the defendant, and to avoid  
17 unwarranted sentencing disparities. The court concludes that early  
18 release is not appropriate.

19 In accordance with the foregoing, IT IS THEREFORE ORDERED  
20 that the defendant's motion for compassionate release (ECF No. 82)  
21 is DENIED.

22 IT IS FURTHER ORDERED that the defendant's unopposed motion  
23 to produce documentary evidence (ECF No. 88) is GRANTED.

24 IT IS SO ORDERED.

25 DATED: This 11th day of April, 2022.

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27

28 UNITED STATES DISTRICT JUDGE